

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

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W.VA. REAL ESTATE
COMMISSION

WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

v.

Formal Complaint No. C-18-022

BRYEN JAMES McHENRY,
Licensed Salespreson
License No. WV-0002825

Respondent.

CONSENT DECREE

Respondent, Bryen James McHenry ("Respondent"), and the West Virginia Real Estate Commission ("Commission") enter into the following Consent Decree for the purpose of resolving the above-styled complaint. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact, Conclusions of Law, and disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. Respondent is a licensed real estate salesperson in the State of West Virginia, holding license number WV-0002825.

2. On or about April 25, 2018, the Commission initiated the above-styled Formal complaint against Respondent based on Respondent's failure to disclose on two annual license renewals criminal proceedings in which Respondent was a party.

3. Specifically, in February of 2015, Respondent was arrested on charges of public intoxication, obstructing an officer, and failure to render information in Wood County, West Virginia.

4. In April of 2015, pursuant to an agreement in the Magistrate Court of Wood County, West Virginia, Respondent entered a no contest plea to public intoxication and the State dismissed the remaining two charges. Respondent paid a fine plus court costs.

5. On Respondent's application for renewal of his salesperson license for the licensure period ending on June 30, 2016 (licensure period July 1, 2015 - June 30, 2016), Respondent marked "No" to the following question:

Are you now or have you been, within the past 36 months: (1) a party to any civil suit or proceeding arising out of any transaction involving real property, other than actions for eviction or for the collection of back rent, or (2) a party to any criminal proceeding other than a misdemeanor traffic violation?

6. On Respondent's application for renewal of his salesperson license for the licensure period ending on June 30, 2017 (licensure period July 1, 2016 - June 30, 2017), Respondent marked "No" to the same question quoted above.

7. By letter dated May 10, 2018, in response to the Formal Complaint, Respondent acknowledged his failure to disclose the arrest and conviction on his annual renewal forms, apologized for the oversight, and assured the Commission that it will never happen in the future.

CONCLUSIONS OF LAW

1. Pursuant to the *West Virginia Real Estate License Act*, West Virginia Code § 30-40-1, et seq., the Commission is charged with the regulation of the practice of real estate brokerage in this State, and, thus, has jurisdiction over this Formal Complaint.

2. In relevant part, West Virginia Code § 30-40-7(1) authorizes the Commission to impose sanctions for violations of the *West Virginia Real Estate License Act*, including, but not limited to, an administrative fine not to exceed \$1,000 per day per violation; probation; revocation; suspension; restitution; additional education; denial of future license; downgrade of license; reprimand; and/or the return of compensation collected from an injured consumer.

3. West Virginia Code § 30-40-19(a)(1) authorizes the Commission to sanction a licensee if the licensee “[o]btains, renews or attempts to obtain or renew a license, for himself, herself or another, through the submission of any application or other writing that contains false, fraudulent or misleading information[.]”

4. West Virginia Code § 30-40-19(a)(2) authorizes the Commission to sanction a licensee if the licensee “[m]akes any substantial misrepresentation[.]”

5. West Virginia Code § 30-40-19(a)(19) authorizes the Commission to sanction a licensee if the licensee “[v]iolates any of the provisions of [the *West Virginia Real Estate License Act*], any rule or order or final decision issued by the commission.” Legislative Rule, 174 CSR 1 § 20.2 mandates that licensees report to the Commission when he or she is a defendant in any criminal proceeding other than a misdemeanor traffic violation.

6. Respondent's failure to disclose the above-referenced criminal proceedings violates West Virginia Code §§ 30-40-19(a)(1), (2), and (19), and renders his license subject to discipline by the Commission.

CONSENT

By signing below, Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein. Respondent acknowledges that he may pursue this matter through appropriate administrative proceedings and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent acknowledges the Findings of Fact set forth above, admits that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consents to the entry of the following Order:

ORDER

On the basis of the foregoing, the Commission hereby ORDERS as follows:

1. Respondent is hereby reprimanded.

2. Respondent shall pay a fine in the amount \$500.00 payable to the State of West Virginia.

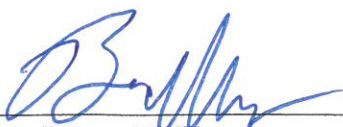
3. Respondent shall also reimburse the Commission its costs associated with this Complaint and its attorney fees, in the amount of \$429.00.

4. The total payment of \$929.00 shall be paid within thirty (30) days of the entry of this Consent Decree by the Commission by certified check or money order made payable to the State of West Virginia and sent directly to the Commission's Office.

5. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, shall constitute a violation of an order of the Commission and may result in further disciplinary action, including, but not limited to, suspension of Respondent's license. The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree. In the event Respondent contests the alleged violation of the Consent Decree, Respondent is entitled to a hearing to challenge the alleged violation. Any such hearing shall be scheduled and conducted in accordance with the provisions of W. Va. Code §§ 30-1-8 and 30-40-1 *et seq.* and any procedural rules promulgated by the Commission.

At its discretion, the Commission also may schedule a hearing on its own initiative for the purpose of allowing the Commission to consider further discipline against Respondent based upon Respondent's violation of this Order of the Commission.

CONSENT DECREE AGREED TO BY:



Bryen James McHenry

7.6.18

Date

ENTERED into the records of the Real Estate Commission this:

18 day of July, 2018.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: Cheryl H. Dawson
Cheryl Dawson, Chair